INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	11
Appendix	12

CITATIONS

Cases:	
Atlas, The, 93 U. S. 302	4
Blackfeather v. *United States*, 190 U. S. 368	6
Blackheath, The, 195 U. S. 361	3
Blamberg Brothers v. *United States*, 260 U. S. 452	8
Boston Sand & Gravel Company v. *United States*, 278 U. S. 41	7
Cleveland Terminal Railroad v. *Cleveland Steamship Co.*, 208 U. S. 316	3
Dobson v. *United States*, 27 F. (2d) 807, certiorari denied, 278 U. S. 653	8
Eastern Transportation Co. v. *United States*, 272 U. S. 675	9
Johnson v. *Fleet Corp.*, 280 U. S. 320	9
Lake Monroe, The, 250 U. S. 246	8
Martin v. *West*, 222 U. S. 191	3
Ozawa v. *United States*, 260 U. S. 178	7
Raithmoor, The, 241 U. S. 166	3
Siren, The, 7 Wall. 152	8
Sloan Shipyards v. *Fleet Corporation*, 258 U. S. 549	9
United States v. *Dickerson*, 310 U. S. 554	7
United States v. *Michel*, 282 U. S. 656	6
United States v. *Sherwood*, 312 U. S. 584	6
Statutes:	
Public Vessels Act of 1925, 43 Stat. 1112 (46 U. S. C. 781):	
Section 1	3, 4, 12
Section 2	5, 12
Section 3	13
Section 4	13
Sections 5–10	14
Shipping Act of 1916, 39 Stat. 728, Section 9	8
Suits in Admiralty Act of 1920, 41 Stat. 525–528 (42 U. S. C. §§ 741–752):	
Section 2	5, 8
Section 3	5

532527—43

Miscellaneous: Page
H. Rep. 411, 75th Cong., 1st Sess---------- 10
H. Rep. 913, 68th Cong., 1st Sess---------- 7
H. Rep. 1462, 70th Cong., 1st Sess---------- 10
S. Rep. 941, 68th Cong., 2d Sess---------- 7
S. Rep. 1254, 75th Cong., 1st Sess---------- 10
S. Rep. 1400, 70th Cong., 2d Sess---------- 10

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 1022

STATE OF MAINE, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the District of Maine (R. 6–9) is reported in 45 F. Supp. 35. The opinion of the United States Circuit Court of Appeals for the First Circuit (R. 14–17) is not yet officially reported.

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the First Circuit was entered on March 27, 1943 (R. 17). The petition for a writ of certiorari was filed on May 13, 1943. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Public Vessels Act of 1925 authorizes a libel *in personam* in admiralty to be brought against the United States upon a nonmaritime cause of action.

STATUTE INVOLVED

The Public Vessels Act of 1925 is set forth in the Appendix, pp. 12–14, *infra.*

STATEMENT

On August 14, 1941, petitioner, the State of Maine, invoking the Public Vessels Act, filed a libel *in personam* in admiralty against the United States in the District Court of the United States for the District of Maine, seeking to recover the amount of $6,836.32, allegedly representing damages sustained when the United States Coast Guard Cutter *Ilex,* on August 17, 1939, struck and damaged petitioner's Carlton Bridge, a drawbridge over the Kennebec River (R. 2–3). On October 3, 1941, the United States appeared specially and moved to dismiss the suit for lack of jurisdiction on the ground that it was brought for a nonmaritime injury, namely, damage to a land structure, and thus failed to state a cause of action within the constitutional grant of admiralty jurisdiction or within the meaning of the Public Vessels Act (R. 4–5). On May 12, 1942, the mo-

tion to dismiss was granted, the court holding that the waiver of sovereign immunity in the Public Vessels Act was limited to causes of action cognizable within admiralty jurisdiction (R. 6–9). On appeal, the Circuit Court of Appeals for the First Circuit affirmed the judgment of the district court (R. 14–17).

ARGUMENT

The suit at bar being against the United States, it cannot be maintained in the absence of a statutory waiver of sovereign immunity. Petitioner seeks to draw the requisite waiver from the Public Vessels Act of 1925, 43 Stat. 1112, 46 U. S. C. 781, which provides in Section 1 that:

> a libel in personam in admiralty may be brought against the United States * * * for damages caused by a public vessel of the United States.

But the Public Vessels Act is applicable here only if that provision authorizes suits on nonmaritime, as well as maritime, causes of action, since the present suit, seeking to recover for damages to a bridge caused by a public vessel, is one for a land tort, traditionally beyond the pale of admiralty jurisdiction (*Cleveland Terminal Railroad* v. *Cleveland Steamship Co.*, 208 U. S. 316; see *Martin* v. *West*, 222 U. S. 191, 196–197), as distinguished from a maritime tort, which is cognizable in admiralty (*The Blackheath*, 195 U. S. 361; *The Raithmoor*, 241 U. S. 166). Petitioner

in effect concedes that its suit is not within the admiralty jurisdiction, but argues that the Public Vessels Act exposes the United States to nonmaritime as well as maritime liabilities in connection with the operation of its public vessels. We believe that both courts below rightly rejected this contention and properly dismissed petitioner's suit for want of jurisdiction.

1. The literal language of the Public Vessels Act excludes suits on nonmaritime causes of action. In an effort to bring its suit within the scope of the Act, petitioner focuses solely on the words "damages caused by a public vessel of the United States" in Section 1, *supra*. But these words, when read in their context, do not sustain petitioner's case. The preceding words, "a libel in personam in admiralty," traditionally peculiar to the institution of proceedings upon maritime causes of action (see *The Atlas*, 93 U. S. 302, 316), indicate that the statute does not cover nonmaritime proceedings, for it is hardly conceivable that Congress intended to create the hybrid of a libel in admiralty upon a nonmaritime cause of action. The natural conclusion, avoiding such an incongruity and giving sensible meaning to every word in the provision, is that Section 1 waives the immunity of the United States only as to causes of action cognizable in admiralty.

The correctness of our view is confirmed by analysis of the Public Vessels Act as a whole.

This statute is primarily substantive in nature, containing no independent provisions regarding the procedure to be followed in the trial of the suits which it authorizes. Instead, Section 2 of the Public Vessels Act provides that such suits "shall be subject to and proceed in accordance with the provisions of the [Suits in Admiralty Act of 1920][1] insofar * * * as not inconsistent, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest." Section 2 of the Suits in Admiralty Act permits a libel *in personam* to be brought against the United States in connection with merchant vessels owned, possessed, or operated by the Government, "in cases where if * * * privately owned and possessed, a proceeding in admiralty could be maintained." And Section 3, immediately following, prescribes the basic procedure for the trial of such suits, and thus necessarily for suits under the Public Vessels Act, pursuant to the latter's Section 2, as follows:

> Such suits shall proceed and shall be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties. A decree against the United States or such corporation may include costs of suit, and when the decree is for a

[1] 41 Stat. 525–528 (46 U. S. C. §§ 741–752).

> money judgment, interest at the rate of 4 per centum per annum until satisfied, or at any higher rate which shall be stipulated in any contract upon which such decree shall be based. Interest shall run as ordered by the court. *Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction.* If the libelant so elects in his libel, the suit may proceed in accordance with the principles of libels in rem wherever it shall appear that had the vessel or cargo been privately owned and possessed a libel in rem might have been maintained. Election so to proceed shall not preclude the libelant in any proper case from seeking relief in personam in the same suit. [Italics supplied.]

The procedure thus provided is manifestly inapposite to the trial of any but "cases of admiralty and maritime jurisdiction." Indeed, to admit petitioner's interpretation of the Act would not only ascribe to Congress the selection of an incongrous and inappropriate procedure for a large class of suits thereunder, but would run counter to the principle that statutes waiving the sovereign immunity be strictly construed in favor of the Government (*Blackfeather* v. *United States,* 190 U. S. 368, 376; *United States* v. *Michel,* 282 U. S. 656; *United States* v. *Sherwood,* 312 U. S. 584, 589–592).

2. Petitioner's theory is also repelled by the Act's legislative history, which of course, con-

trary to petitioner's argument (Pet. 10–11, 14), is relevant (see *Boston Sand & Gravel Company* v. *United States,* 278 U. S. 41, 48; *United States* v. *Dickerson,* 310 U. S. 554, 561–562). The reports of both Congressional committees which considered the measure described its purpose as follows (H. Rept. 913, 68th Cong., 1st Sess., p. 1; S. Rept. 941, 68th Cong., 2d Sess., p. 1):

> The chief purpose of this bill is to grant private owners of vessels and of merchandise a right of action when their vessels or goods have been damaged as the result of a collision with any Government-owned vessel, though engaged in public service, without requiring an application to Congress in each particular instance for the passage of a special enabling act.
>
> The bill, in principle, is simply a substitute for the practice, long established, of passing special bills under which private owners have been allowed to submit to our admiralty courts admiralty claims of this character.

This plainly indicates that Congress, when it passed the Public Vessels Act, was thinking in terms of "cases of admiralty and maritime jurisdiction." Indeed, to construe the statute to authorize suits against the United States upon nonmaritime causes of action "leads to an unreasonable result plainly at variance with the policy of the legislation as a whole" (*Ozawa* v. *United States,* 260 U. S. 178, 194). For it would

attribute to Congress the intention to impose greater liabilities upon the United States in the operation of its public vessels, devoted directly to the maintenance of the public safety, than it has seen fit to impose with respect to Government merchant vessels, normally devoted to ordinary mercantile pursuits.[2] The apparent purpose of the Public Vessels Act was rather "to assume liability for damage done by a public vessel * * * similar to that already assumed by the United States with respect to its merchant fleet by the Suits in Admiralty Act." See *Dobson* v. *United States,* 27 F. (2d) 807, 808 (C. C. A. 2), certiorari denied, 278 U. S. 653.

Petitioner attempts to justify the imposition of broader liabilities upon the United States under the Public Vessels Act on the hypothesis that this statute conferred a previously nonexistent right, whereas the Suits in Admiralty Act "restricted" a previously available right. Petitioner's premise is questionable;[3] but even if it be accepted *ar-*

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[2] As previously noted, *supra*, p. 5, Section 2 of the Suits in Admiralty Act limits the liability of the United States in the operation of its merchant vessels to "cases where if * * * privately owned and possessed, a proceeding in admiralty could be maintained."

[3] Prior to the enactment of the Suits in Admiralty Act, the right to proceed against Government merchant vessels was likewise founded upon a statutory waiver of sovereign immunity, Section 9 of the Shipping Act of 1916 (39 Stat. 728, 730), the vessels being otherwise immune as sovereign property (see *The Siren*, 7 Wall. 152, 154–155). See *The Lake Monroe*, 250 U. S. 246; *Blamberg Brothers* v. *United*

guendo, the asserted conclusion does not follow. The manifestation of a legislative intention to narrow previously available rights with respect to Government *merchant* vessels suggests at least as restrictive a Congressional purpose in respect of a later statute consenting to liability in the operation of the Government's *public* vessels.

Nor is there any point to the suggestion (Pet. 13) that because of the increasing number of public vessels now being acquired an undue burden will be placed upon Congress if special acts are necessary to obtain relief for nonmaritime injuries caused by such vessels.[4] The same argu-

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States, 260 U. S. 452, 458. And while it substituted a right *in personam* against the United States for the previous *in rem* liability of the vessels, it is hardly accurate to conclude that the Suits in Admiralty Act "restricted" the liabilities of the United States in connection with the operation of its merchant vessels. *Cf. Eastern Transportation Co.* v. *United States*, 272 U. S. 675, 688 *et seq.; Johnson* v. *Fleet Corp.*, 280 U. S. 320, 325–326; see also Brief for the United States in No. 65, this Term (*Clyde Mallory Lines* v. *Eglantine*, 317 U. S. 395), p. 12, n. 6.

It is also questionable whether the Suits in Admiralty Act restricted the previously available right to proceed at law against government-owned shipping corporations, as distinguished from the United States, upon nonmaritime causes of action, a right founded on corporate authority to sue and be sued (*Sloan Shipyards* v. *Fleet Corporation*, 258 U. S. 549). For the exclusiveness of the remedy conferred by the Suits in Admiralty Act evidently applies only to "cases where a libel might be filed under it." *Johnson* v. *Fleet Corp.*, 280 U. S. 320, 327.

[4] The correspondence quoted in the petition (pp. 14–17) concerning petitioner's unsuccessful attempt to obtain relief by special act of Congress is not a part of the record but

ment could be made with respect to the general immunity of the United States from tort liability, which Congress has not yet seen fit to relax—more particularly with respect to nonmaritime injuries inflicted by United States merchant vessels, whose numbers are likewise rapidly increasing at the present time. And as in these other classes of

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was introduced in a letter written to the clerk of the court below, after the case had been argued before that court. The Attorney General thereupon wrote the clerk that inquiry of the Coast Guard disclosed that the letters from the Acting Secretary of the Treasury had in fact been prepared by an official of the Lighthouse Service, who was not a lawyer, without consultation with the Department of Justice. The letter also noted that this official was unaware of the "*Pickert Fish Company* case," in which, subsequent to the passage of the Public Vessels Act, a special act had been passed permitting that company to sue at law for damages to a wharf caused by a Coast Guard cutter. The letter concluded that had the matter been referred to its attention, the Department of Justice would have advised the Treasury officials of its view that the Public Vessels Act did not extend to land torts. The favorable reports of the Congressional committees upon the special act for the relief of the Pickert Fish Company (45 Stat. 2040) embodied a Department of Justice memorandum which concluded that there was no reason why the claimant should not be relieved by special act, after reciting that a libel in admiralty upon the same claim had previously been brought against the United States under the Public Vessels Act, but that exceptions seeking its dismissal had been filed on the ground that admiralty jurisdiction did not cover damages to a wharf. S. Rep. 1400, 70th Cong., 2d Sess.; H. Rep. 1462, 70th Cong., 1st Sess. In 1937 a similar private act was passed for the relief of the Delaware Bay Shipbuilding Company, Inc., 50 Stat. (pt. 2) 1079. See S. Rep. 1254, 75th Cong., 1st Sess.; H. Rep. 411, 75th Cong., 1st Sess.

torts for which the United States has not consented to be sued, the remedy lies with the legislature.

In the circumstances, there is no basis for construing the Public Vessels Act to permit suits against the United States upon nonmaritime causes of action.

CONCLUSION

There is no conflict, and the decision below is clearly correct. The petition for certiorari should accordingly be denied.

Respectfully submitted.

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